



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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11-CAI-01

DOCKET

11-CAI-04

**FOR THE CALICO SOLAR PROJECT
COMPLAINT AND INVESTIGATION**

Docket Nos. 11-CAI-01
11-CAI-04

DATE SEP 09 2011

RECD. SEP 09 2011

**COMMITTEE ORDER REGARDING
PATRICK C. JACKSON'S PETITION TO INTERVENE AND REQUEST FOR INVESTIGATION**

FACTUAL BACKGROUND

On or about July 12, 2011, BNSF Railway Company (BNSF) filed a *Verified Complaint to Revoke Certification* (Complaint)¹ with the Energy Commission Siting/Dockets Unit. On or about July 14, 2011, the Siting/Dockets Unit submitted the Complaint to the Energy Commission Compliance Program Manager assigned to the Calico Solar Project (Docket No. 08-AFC-13). On or about July 20, 2011, BNSF filed the Complaint with the Energy Commission Chief Counsel.

The Complaint's primary allegations are: (1) Calico Solar, LLC's² "application and supplemental documentation contained material false statements regarding commercial viability and availability of SunCatchers for the Calico Solar Project" (hereinafter, the misrepresentation allegations) and (2) "there has been a 'significant failure' by Applicant to comply with the terms or conditions of approval of the application as specified by the Commission in its December 1, 2010 written decision (hereinafter, the compliance allegations). (Complaint, ¶ 2.)

By an order dated August 5, 2011, the Siting Committee directed the assigned Hearing Adviser to serve the Complaint on Calico. As provided in the Commission Regulations, Calico had 21 days from the date of service to file an answer to the Complaint. The August 5 Order directs Commission Staff to submit an assessment of the complaint's misrepresentation allegations and the answer pursuant to Section 1233.5.³ The Siting Committee Order also affirmed Energy Commission Staff's duty under Section 1237 to investigate the Complaint's compliance allegations that Calico failed to comply with conditions of certification.

¹ BNSF filed a second complaint on or about August 25, 2011. The Committee has taken no action to date on that pleading.

² The Committee notes that Calico recently changed its name to K Road Calico, LLC.

³ All regulatory references are to Title 20 of the California Code of Regulations unless otherwise specified.

The Hearing Adviser's Office mailed the Complaint to Calico on August 11, 2011. Calico answered the Complaint on September 2, 2011.

On August 12, 2011, Energy Commission Staff filed *Staff's Response to Verified Complaint to Revoke Certification*, which was prepared as part of Staff's Section 1237 investigation of the Complaint's compliance allegations. Staff questioned the sufficiency of the Complaint but nonetheless addressed the Complaint on its merits. The Committee has not yet taken action on the compliance allegations.

On or about August 10, 2011, Patrick C. Jackson filed a *Petition to Intervene* (Petition) in the proceedings initiated by the Complaint. He stated in pertinent part: "I have an interest in this proceeding as I own property adjacent to the Calico Solar Project and the Project will have a direct impact on my property. I am concerned about my property; my property rights; my health and safety; the health and safety of visitors to my property; and the rights, health and safety of the public accessing public lands surrounding the Project." (Petition, p. 1.) Thereafter, on or about August 13, 2011, Jackson filed a letter with the Energy Commission Chief Counsel requesting an investigation under the authority of Commission Regulations section 1231. Mr. Jackson's request for investigation states in pertinent part:

A full investigation into BNSF's [Complaint] allegation as to whether the "Applicant's application and supplemental documentation contained material false statements" is necessary for the Parties, Intervenors, interested agencies, entities and persons and the public to better understand and fully participate in this proceeding and the Compliance Proceeding.

Commission staff should investigate all facts pertaining to BNSF's allegation including but not limited to the statement of facts set forth in the BNSF Complaint and its Exhibits.

(Jackson Request for Investigation, p. 2.)

On or about August 23, 2011, Calico filed an *Opposition to Petition for Intervention of Patrick Jackson and Request for Investigation* (Opposition). Calico alleges that Jackson's Petition is deficient in part because "Mr. Jackson's interest in his property rights and in health and safety do not have anything to do with the allegations in BNSF's complaint. Further, Mr. Jackson has not stated any reason why he has any information to offer that will help advance the evaluation of BNSF's complaint." (Opposition, p. 1.) Calico also contends that the request for investigation lacks required factual allegations or legal claims.

Mr. Jackson responded to the Opposition on August 28, 2011, by filing *Patrick C. Jackson's Rebuttal Comments to Calico Solar, LLC's Objection to Mr. Patrick Jackson's (1) Petition to Intervene and (2) Request for Investigation* (Jackson Rebuttal). He rejects and objects to Calico's allegations that his pleadings were deficient. Regarding

the Petition, he asserts that “Mr. Jackson’s property rights and health and safety are material to this proceeding” and alleges that Project-related grading caused him to contract Valley Fever, and further states:

If the California Energy Commission finds BNSF’s allegation is valid and the Applicant’s application and supplemental documentation contain material false statements, the finding of fact will show intent on the part of the Applicant to deprive Mr. Jackson of his property rights, health and safety with the construction and operation of the CSP. The finding of fact will also show the Applicant’s intent to deceive the Parties in the Original Proceeding and ongoing Compliance Proceeding, the people of California and American taxpayers who will fund the CSP.

(Jackson Rebuttal, pp. 6 - 7.)

Mr. Jackson, in responding to the Opposition’s challenge to his request for investigation, contends that he does not have to include a statement of facts upon which the complaint or request for investigation is based or a statement including the statute, regulation, order or decision upon which the complaint or request is based. He asserts that it is acceptable to reference the Complaint as the basis for his request for investigation. Mr. Jackson also notes that his request for investigation and the Complaint are “two legally separate documents and each includes all the required statement of facts and legal references.” (Jackson Rebuttal, pp. 9-10.)

All of the above-described documents were filed under Energy Commission Docket Number 11-CAI-01. However, on August 25, 2011, the Commission Siting/Dockets Unit assigned Docket Number 11-CAI-04 to Mr. Jackson’s request for investigation.

DISCUSSION

Petition for Intervention

Under Section 1207, petitions to intervene must include the grounds for the intervention and the position and interest of the petitioner in the proceeding. (§ 1207, subd. (a).) Instead of addressing these elements individually, Mr. Jackson’s Petition states: “I have an interest in this proceeding as I own property adjacent to the Calico Solar Project and the Project will have a direct impact on my property. I am concerned about my property; my property rights; my health and safety; the health and safety of visitors to my property; and the rights, health and safety of the public accessing public lands surrounding the Project.” While this statement arguably explains Mr. Jackson’s interest in the proceedings, neither it nor any other provision of the Petition explains the grounds for intervention or Mr. Jackson’s position in the proceedings. This information is essential to a determination of whether intervention is reasonable or relevant. (§ 1207, subd. (c).)

Mr. Jackson supplemented the Petition with Rebuttal assertions made under penalty of perjury under the laws of the State of California. The Rebuttal states that the Complaint

proceedings might result in a finding that Calico made material false representations during the Calico Solar Project application for certification proceedings and that such finding “will show intent” of Calico to deprive Mr. Jackson of his property rights and health and safety. Even assuming the Committee incorporates the supplemental assertions into the Petition and finds that the Petition (as supplemented) now alleges the required interest, position, and grounds for intervention, the Petition still misses the mark.

Mr. Jackson’s pleadings – both individually and combined – fail to show the relevance of his wish to participate in the Complaint proceedings to the the discrete factual and legal issues raised by the Complaint. More particularly, the Complaint does not address or purport to involve property rights of land owners adjacent to the Calico Solar Project or public health and safety. Instead, it alleges Calico’s failure to comply with unspecified conditions of certification and attributes to Calico alleged material false statements during the Calico Solar Project application for certification proceedings. Mr. Jackson alleges no facts connecting him to the factual and issues raised by the Complaint. At most, he surfaces his interest in the termination of the Calico Solar Project.⁴

Thus, upon consideration of Mr. Jackson’s Petition and Calico’s opposition thereto, we concur with Calico’s contention that Mr. Jackson has not satisfied the requirements of Section 1207, subdivision (a). However, we decline to deny Mr. Jackson’s Petition as requested by Calico without providing him with an opportunity to amend or supplement the Petition to cure the identified deficiencies. Accordingly, Mr. Jackson has leave to amend or supplement the Petition by 5:00 p.m. on Friday, September 16, 2011.

Request for Investigation

Upon considering Mr. Jackson’s request for investigation and Calico’s opposition thereto, we concur with Calico’s contention that the request lacks the essential factual allegations or legal claims required by Section 1231, subdivision (b) - namely, a statement of the facts upon which the request for investigation is based, a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based, and the action the petitioner desires the commission to take. (§1231, subd; (b)(3)-(5).)

By his own admission, Mr. Jackson’s request for investigation is premised on allegations of the Complaint, which he describes as a separate legal document including the required statement of facts and legal references. (Jackson Rebuttal, pp. 9-10.) Yet, Mr. Jackson did not incorporate the Complaint into his request for investigation by reference or reallege all of the pertinent facts contained in the Complaint. Moreover, Mr. Jackson points to no legal authority authorizing him to submit a request for investigation without complying with the requirements of Section 1231.

⁴ Mr. Jackson was granted Intervenor status in the Calico Solar Project and Calico Solar Project Amendment proceedings. In both matters, he has questioned the projects’ impacts on his private property rights, public health and safety and the routes by which the project will be accessed.

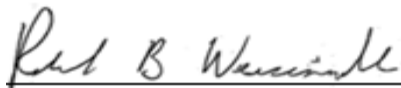
Accordingly, we find that Mr. Jackson's request for investigation fails to satisfy the requirements of Section 1231. We grant him leave to amend the request to cure these deficiencies by 5:00 p.m. on Friday, September 16, 2011. If, however, Mr. Jackson elects to cure the deficiencies by merely incorporating the Complaint by reference or repeating the matters contained therein, we impose on Mr. Jackson the additional obligation of explaining how his revised request is neither unnecessarily cumulative nor redundant of matters raised by the Complaint.

IT IS SO ORDERED.

Dated: September 9, 2011, at Sacramento, California.

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER
Chair and Associate Member
Siting Committee



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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on September 9, 2011, I served and filed copies of the attached COMMITTEE ORDER REGARDING PATRICK C. JACKSON'S PETITION TO INTERVENE AND REQUEST FOR INVESTIGATION, dated September 9, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/calicosolar/investigate/index.html>].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

 X Served electronically to all e-mail addresses on the Proof of Service list;

 X Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

 X by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**

 by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 11-CAI-01

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, §§ 1720

 Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission

Michael J. Levy, Chief Counsel

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By:

RoseMary Avalos

Hearing Advisers Office